IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

OP.No. 14522 of 2003(D)

PETITIONERS:

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1. **N.B.PUSHPAVALLI, INSPECTOR,**
   LEGAL METROLOGY, KOCHI-2.

2. **T.J.KURIAKOSE, SENIOR INSPECTOR,**
   LEGAL METROLOGY, THODUPUZHA.

3. **J.C.JEESON, INSPECTOR,**
   LEGAL METROLOGY, CHERTHALA.

BY ADV. SRI.C.K.PAVITHRAN,
SMT.DHANYA C.MOHAN.

RESPONDENTS:

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1. **GOVT.OF KERALA, REPRESENTED BY**
   SECRETARY TO GOVT., REVENUE DEPARTMENT,
   SECRETARIATE, THIRUVANANTHAPURAM.

2. **CONTROLLER, LEGAL METROLOGY,**
   VIKAS BHAVAN, THIRUVANANTHAPURAM,
   PIN-695 033.

3. **ASST.CONTROLLER, LEGAL METROLOGY,**
   BHAVAN, KAKKANAD, KOCHI-30.

4. **ASST.CONTROLLER, LEGAL METROLOGY,**
   THODUPUZHA, IDUKKI DISTRICT.

O.P. NO. 14522/2003:

5. ASST.CONTROLLER, LEGAL METROLOGY,
KALARICKAL, AVALUKKUNNU P.O., ALAPPUZHA.

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 24353/2003 IN O.P. NO. 14522/2003

DISMISSED

05/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE MEMO DTD. 04/01/2001 ISSUED BY THE R.2.

EXT.P.2: COPY OF THE REPLY DTD. 29/01/2001 SUBMITTED BY THE P.1.

EXT.P.3: COPY OF THE PROCEEDINGS NO. B2-1424/99 DTD. 07/03/01 OF THE R.2.

EXT.P.4: COPY OF THE PETITION DTD. 03/05/2001 SUBMITTED BY THE P.1.

EXT.P.5: COPY OF THE PETITION DTD. 08/05/2001 SUBMITTED BY THE P.2.

EXT.P.6: COPY OF THE PETITION DTD. 02/05/2001 SUBMITTED BY THE P.3.

EXT.P.7: COPY OF THE LETTER DTD. 08/01/2002 ISSUED BY THE R.3.

EXT.P.8: COPY OF THE ORDER DTD. 07/10/1976 OF THE CONTROLLER WEIGHTS & MEASURES.

EXT.P.9: COPY OF THE NOTICE DTD. 29/03/2003 ISSUED BY THE R.3.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

Thottathil B. Radhakrishnan, J.

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O.P.No.14522 of 2003-D

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Dated this the 5th day of July, 2007.

JUDGMENT

Petitioners are Inspectors notified as such under the Standards of Weights and and Measures (Enforcement) Act, 1985, hereinafter referred to as the "Act". Ext.P7 shows that, on enquiry about unauthorised camp office in Neriamangalam, it is noticed that though such a camp point is not included in the camp programme approved by the Controller, such a camp is being held at that point since many number of years on the assumption that it is a camp point included in the list of camps approved by the Controller.

2. Petitioners are Inspectors who had carried out the activity of verifying and stamping of weights and measures in terms of Section 24 from that point in Neriamangalam in exercise of

authority under the Act.

3. In terms of Rule 17(1) of the Kerala Standards of Weights and Measures (Enforcement) Rules, 1992, hereinafter referred to as the "Rules", fee, at the rates specified in Schedule XII, has to be paid for verification and stamping of weights and measures at the office or camp office. Sub-rule 2 of Rule 17 provides that if verification and stamping is done outside the office or camp office, the fee leviable will be one and a half times that stated in Schedule XII and that the cost of transporting and handling the work would also be charged when Inspectors have to visit the premises of the person whose weights and measures are to be verified and stamped.

4. Taking the stand that Neriamangalam was not an authorised camp, the petitioners were proceeded against on the ground that the

verifications and stampings done by them in that camp are not those done in an office or camp office as authorised by the Controller in terms of Section 24(1) of the Act and that therefore the levy of fee and expenditure ought to be in terms of Rule 17(2) of the Rules and hence the Government have incurred loss, which has to be borne by the petitioners.

5. It is not a case where the petitioners had visited the premises of any person for verifying and stamping the weights and measures. Therefore, at any rate, the question of claiming conveyance and expenditure does not arise. Neriamangalam is an unauthorised camp, going by Ext.P7. But the fact remains that even as per Ext.P7, the report is that, Neriamangalam camp had been functioning for quite a long time. If that were so, there is no question of negligence, breach of duty or any vitiating element on the basis of which a penalty could be imposed on the officers, who had worked in

that camp. At any rate, it is not a case where it could be treated that the Government had incurred loss by the non-collection of fee under Rule 17(2) to claim that the petitioners have to compensate any such deemed loss of the Government.

5. For the foregoing reasons, the impugned orders do not stand and they are liable to be set aside.

In the result, this writ petition is allowed quashing Exts.P3 and P9. No costs.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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O.P.No.14522 of 2003-D

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JUDGMENT

Dated:5-7-2007